REMARKS

This application has been carefully reviewed in light of the Office Action dated February 6, 2009. Claims 12 to 23 are in the application, with Claims 1 to 11 having been canceled without prejudice or disclaimer of subject matter. Claims 12 and 21 are the independent claims. Reconsideration and further examination are respectfully requested.

Applicant continues to believe that the restriction requirement was entered improvidently. Moreover, while the Office Action has provided somewhat new rationale for the restriction requirement, the Office Action still does not respond substantively to the arguments presented in the original traversal of the restriction requirement. In addition, the Office Action still cites figures showing arrangements that are common to different embodiments, as opposed to distinct. Nevertheless, without conceding the correction of the requirement and solely in an effort to advance prosecution, Claims 1 to 11 have been canceled.

The Office Action maintains that since Figure 17 is defined by Applicant as a view for explaining a conventional moving image technique, Figure 17 should be designated as "Prior Art". This objection is traversed, since a view for explaining a conventional technique does not necessarily mean that the view itself is conventional. In fact, Figure 17 was created by the Applicant, in order to explain his own discoveries relative to problems in the conventional techniques. Since Figure 17 contains Applicant's own discoveries, it is not correct to state that it illustrates "only that which is old", as stated at page 3 of the Office Action. Accordingly, and since Figure 17 contains original discoveries made by Applicant herein, it is not being labeled as "Prior Art".

Claims 12 to 23 were rejected under 35 U.S.C. § 101 for being directed to non-statutory subject matter. In particular, the Office Action contends that Claims 12 to 23 do not transform the underlying subject matter, nor positively tie to another statutory category. This rationale is similar to the recent Federal Circuit decision in *In Re Bilski*, which stated that to pass muster under § 101, a process must either (1) be "tied to a particular machine or apparatus", or (2) "transform a particular article into a different thing or state". Without conceding the correctness of the rejection, independent Claim 12 has been amended to recite that division information is held with moving image data in a memory. With regard to independent Claim 21, however, the rejection is traversed. In particular, Claim 21 is directed to an apparatus, not a method, and therefore should not be examined under *Bilski*. Withdrawal of the § 101 rejection is therefore respectfully requested.

Claims 12 to 17 and 19 to 23 were rejected under 35 U.S.C. § 103(a) over Japan 8-163488 (Matsushita '488), "Applicant Admitted Prior Art" (AAPA) and Official Notice. Claim 18 was rejected under 35 U.S.C. § 103(a) over Matsushita '488, AAPA, Japan 5-147337 (published as JP 7-023322, hereafter "Matsushita '322") and Official Notice. Reconsideration and withdrawal of the rejections are respectfully requested.

Independent Claims 12 and 21 generally concern dividing a moving image sensed between a beginning of recording and an ending of recording. The moving image is divided on the basis of a plurality of items of additional data which indicate states upon sensing the moving image. An item group formed of one or a plurality of items of

additional data is defined, and division information corresponding to the item group is generated on the basis of the additional data of items which belong to the item group.

According to one aspect of Claims 12 and 21, in a case that a plurality of division information is generated in correspondence with a plurality of item groups, the plurality of division information is hierarchized.

For example, in one example embodiment described in the specification, a moving image sensed between the start and end of recording is divided into significant intervals based on appended information from the image sensing environment. The intervals are organized into groups based on the type of appended information. The plurality of divisions can then be organized into a hierarchical structure, based the number of intervals in each group, or predefined settings by the user. In one example shown in Applicant's Figure 29, the plurality of divisions of the moving image are hierarchized into three layers: 1) image sensing environment, 2) subject, and 3) subject size.

Referring specifically to claim language, independent Claim 12 is directed to a moving image processing method for dividing a moving image sensed between a beginning of recording and an ending of recording, on the basis of a plurality of items of additional data which indicate states upon sensing the moving image. The additional data is added to the moving image and is able to be read out for each item from the moving image. The method includes a generation step of defining an item group formed of one or a plurality of items selected from the plurality of items, and generating division information corresponding to the item group on the basis of the additional data of the items which belong to the item group. The method also includes a hierarchization step of

hierarchizing a plurality of division information generated for each item group, and of adding division positions based on division information of an upper layer to division positions of division information of a lower layer. The plurality of division information is hierarchized and the division positions are added in a case that the plurality of division information is generated in the generation step in correspondence with a plurality of item groups. In addition, the method includes a holding step of holding the division information obtained in the hierarchization step in correspondence with the moving image data in a memory.

Independent Claim 21 is directed to an apparatus substantially in accordance with the method of Claim 12.

The applied art is not seen to disclose or suggest the features of Claims 12 and 21, and in particular is not seen to disclose or suggest at least the feature of hierarchizing a plurality of division information generated for each item group of a plurality of item groups.

Page 10 of the Office Action concedes that Matsushita '488 and AAPA do not disclose hierarchizing a plurality of division information in the case that a plurality of division information is generated in correspondence with a plurality of item groups.

In contradiction of this concession, however, page 8 of the Office Action asserts that Matsushita '488 (paragraph [0020]) does disclose hierarchizing a plurality of division information generated for each item group. The rationale for the rejection is therefore somewhat unclear to Applicant, and is consequently not understood.

For his part, Applicant believes that Matsushita '488 does not disclose the claims hierarchization. As it is understood, Matsushita '488 is directed to creating a hierarchical structure of video in order to generate a digest. See Matsushita '488, paragraph [0005]. In particular, Matsushita '488 discloses a structure in which individual frames of video are bundled together based on camera work to form "shots". Shots are accumulated between a start of recording and an end of recording to form a "cut". A "scene" may also be generated to summarize a cut. See Matsushita '488, paragraphs [0011] and [0020] to [0022].

Thus, according to Matsushita '488, a cut defined by a start and an end of recording is divided into shots based on camera work. More specifically, according to Matsushita '488, a continuous cut is sensed between beginning of recording and ending of recording, and one or more shots are defined as part of the cut by dividing the continuous cut based on a changing point of camera work such as a zoom operation or a pan operation.[1] See Matsushita, paragraph [0020].

Nevertheless, Matsushita '488 is not seen to organize the shots above or below each other, much less into any sort of hierarchical levels. Thus, when dividing a cut sensed between a start and an end of recording into shots based on camera work, all of Matsushita's shots are on the same level. Therefore, Matsushita '488 is not seen to

---

[1]Paragraph [0020] of the machine-generated translation of Matsushita '488 refers to "dividing" a frame into a shot. However, it is possible that this is a translation or transcription error, as paragraph [0011] makes clear that frames are combined to form shots.

hierarchize a plurality of division information generated for each item group of a plurality of item groups.

AAPA is not seen to remedy these shortcomings. In this regard, page 9 of the Office Action asserts that Applicant's Figure 17 discloses a hierarchization step.

Applicant's Figure 17 indicates that a plurality of division information are generated based on a plurality of items, such as Gain, White Balance, Subject Distance, Zoom, and Pan. However, according to Applicant's Figure 17, each of the plurality of items (Gain, White Balance, Subject Distance, Zoom, and Pan) are treated equally, and the generated division information is not hierarchized. See Specification, Figure 17. Thus, AAPA is not seen to disclose or suggest hierarchizing a plurality of division information generated for each item group of a plurality of item groups.

Page 10 of the Office Action also appears to rely on Official Notice for disclosure of hierarchizing a plurality of division information in the case that a plurality of division information is generated in correspondence with a plurality of item groups.

Applicant respectfully traverses the Office Action's assertion that disclosure of hierarchizing a plurality of division information in the case that a plurality of division information is generated in correspondence with a plurality of item groups is well-known in the art, and respectfully requests that if the art rejections are maintained, the next Office Action include documentary evidence to support this contention. See MPEP § 2144.03 ("If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained.") .

Matsushita '322 has been reviewed and is not seen to remedy the deficiencies of Matsushita '488 and AAPA.

Therefore, independent Claims 12 and 21 are believed to be in condition for allowance, and such action is respectfully requested.

The other claims in the application are each dependent from the independent claims and are believed to be allowable over the applied references for at least the same reasons. Because each dependent claim is deemed to define an additional aspect of the claims, however, the individual consideration of each on its own merits is respectfully requested.

No other matters being raised, the entire application is believed to be in condition for allowance, and such action is courteously solicited.

Applicant's undersigned attorney may be reached in our Costa Mesa, California office at (714) 540-8700. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,

/Michael J. Guzniczak/
Michael J. Guzniczak
Attorney for Applicant
Registration No.: 59,820

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3800
Facsimile: (212) 218-2200

FCHS_WS 3289229v1